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HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,
Appellant,

vs.

WILLIAM RICHARDSON,
Appellee

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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IN THE

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No. .....

G. SEALS AIKEN,
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Appellee

BRIEF IN OPPOSITION TO MOTION TO DISMISS

Appellee contends in his Motion to Dismiss Appellant's appeal that, "No Federal question is presented, the Supreme Court of the State of Georgia having held as a matter of State practice that the Federal question upon which the Appellant seeks to rely was not seasonably raised and is now Res Adjudicata and came too late to be considered by that court and therefore too late to afford a basis for appeal to this court."

There is no merit whatever in said Motion for the following reasons:

1. The power does not lie in a State Court to put the U. S. Constitution out of this case and by an alleged rule of practice to restrict the jurisdiction of this court in the determination of the Federal constitutional questions raised by Appellant. See the dissenting opinion of Mr. Justice Cardozo, Mr. Justice Brandeis, and Mr. Justice Stone in

Herndon v. *State of Georgia*, 295 U. S. 441, 55 S. Ct. at page 799; *Dan Rogers* v. *State of Alabama*, 192 U. S. 226, 24 S. Ct. 257; *Davis, Director General of Railroads* v. *Wechsler*, 263 U. S. 22, 44 S. Ct. 13.

2. There is no rule of practice in Georgia under which it can be held that "the Federal question upon which Appellant seeks to rely was not seasonably raised and is now res adjudicata and came too late to be considered by that court and therefore too late to afford a basis for appeal to this court."

3. The Federal questions presented by this appeal were properly and timely raised in the manner expressly provided for in Georgia Code Sections 110-701, 110-702, and 110-709, by Motion to Set Aside as Void (for "defect not amendable which appears on the face of the record or pleadings" and for want of jurisdiction) the Penal Rule Absolute entered by State Superior Court Judge Andrews against Appellant without a trial and without any evidence.

4. The Chief Justice of the Supreme Court of Georgia in his order allowing this appeal expressly states in part as follows:

> "It appearing that the Appellant in his Motion to Set Aside the Penal Rule Absolute as Void, in his Bill of Exceptions to the Supreme Court of Georgia, in his Motion for Rehearing, and in his Motion for Reconsideration in said court, duly attacked the validity of the Georgia Statutes identified as Georgia Code Sections 24-210 and 24-206 under which his answer was stricken and the said Penal Rule Absolute was entered against him, on the grounds that, as construed and applied by the Supreme Court of Georgia to the pleadings in this case and the acts and activities of Appellant, they violate the due process clause of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in the above stated papers pre-

sented by him and in his appeal and Assignments of Error and Statement as to Jurisdiction to the Supreme Court of the United States in this case, under the circumstances shown; and that the decision of the Supreme Court of Georgia appealed from is in favor of the validity of the said Georgia Statutes attacked by Appellant as repugnant to the Fourteenth Amendment of the U. S. Constitution;

* * * * * * *

"It appearing that the Federal questions presented by Appellant's appeal were properly and timely raised, that they are substantial in nature and of grave and public concern, and that they are subject to review by the U. S. Supreme Court by appeal under the express provisions of the U. S. Code Annotated, Title 28, Section 1257."

5. The right to enforce payment of money by Rule is *penal* in its nature, *and must be strictly construed. Texas* v. *White,* 10 Wall. 483; *Haygood* v. *Haden,* 119 Ga. 463, 46 S. E. 625; *Breen* v. *Phillips et al.,* 169 Ga. 13, 149 S. E. 565; *Felton* v. *Smith et al.,* 52 Ga. App. 436, 183 S. E. 634; *Chipman* v. *Barron,* 2 Ga. at p. 230.

6. The U. S. Supreme Court has held that a judgment rendered in a Penal and Contempt Money Rule case (such as this) without a trial and without any evidence, is void for want of jurisdiction in the court to render it, that it constitutes a denial of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, and that it is not entitled to any respect at any time in any judicial tribunal. *Hovey* v. *Elliott,* 167 U. S. 409, 17 S. Ct. 841; *Cooke* v. *U. S.,* 267 U. S. 517, 45 S. Ct. 390; *In Re: Oliver,* 333 U. S. 257, 68 S. Ct. 499; *Texas* v. *White,* 10 Wall. 483. The Supreme Court of Georgia in *White* v. *George, Marshal,* et al., 195 Ga. 465, 24 S. E. 2nd 787, also recently held that, "All the authorities agree that a hearing

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must be accorded to one charged with a constructive contempt" (such as the alleged contempt in this case), and quoted the very language relied upon by Appellant from the decision of this court in *Windsor* v. *McVeigh*, 93 U. S. 274, which was quoted in *Hovey* v. *Elliott*, supra, as follows:

> "A sentence of a court pronounced against a party without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal."

7. The Supreme Court of Georgia in *Prescott* v. *Bennett*, 50 Ga. 268, set aside a judgment four years old as void for want of jurisdiction in the court to render it because it was rendered on a ground wholly unknown to the law (as in this case), and held that such a judgment was a mere usurpation of power by the court, that it could not stand any more than a house without a foundation, and that it could be set aside as a nullity collaterally under the several provisions of the Georgia Code in relation to setting aside judgments (now Georgia Code Sections 110-701, 110-702, and 110-709) whether excepted to or not, and that the said Code Sections were created for the very purpose of affording another remedy against such void judgments where not otherwise excepted to. See in this connection also *Franklin* v. *Crowe*, 128 Ga. 458, 57 S. E. 784; *U. S.* v. *Walker*, 3 S. Ct. 282, 109 U. S. 258; *Jones* v. *Jones*, 181 Ga. 747, 184 S. E. 270; *Towns* v. *Springer*, 9 Ga. 130.

8. The Georgia Statutes (Georgia Code Sections 24-210 and 24-206) under which the Penal Rule Absolute was entered in this case (without a trial and without any evidence) were attacked by Appellant in his Motion to Set it Aside (under Georgia Code Sections 110-701, 110-702, and 110-709), in his Bill of Exceptions to the Supreme Court of Georgia, in his Motion for Rehearing and in his Motion for Reconsideration in that court, and also in this appeal

to the U. S. Supreme Court, as repugnant to Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in Appellant's Statement as to Jurisdiction. This is in exact accordance with the Georgia State practice, as shown by said Code Sections and the authorities cited.

9. Inasmuch as Section I of the Fourteenth Amendment of the U. S. Constitution has been construed and applied by the U. S. Supreme Court in *Hovey* v. *Elliott*, supra, to a Penal and Contempt Money Rule (like the one at bar) and has been held to prohibit as a denial of due process of law in violation of said amendment the striking of an answer and the rendering of a decree pro confesso in such a proceeding, it is binding upon the Supreme Court of Georgia in this case and upon this Honorable Court in this appeal; and the Supreme Court of Georgia has held in the recent case of *Crumb* v. *State*, 205 Ga. 547, 54 S. E. 2nd 639, that, "A construction of a clause of the U. S. Constitution having been invoked, the interpretation given thereto by the U. S. Supreme Court becomes binding authority upon this court."

10. The Supreme Court of Georgia has emphatically and uniformly held prior to its decision in this case that a contempt rule against an officer of the court (such as this) is not subject to estoppel and does not stand in the same category as other cases, and that a Rule Absolute is never Res Adjudicata, but is *always open* for the purpose of investigation upon a proper motion or case made, and that the court must necessarily, in a proper case, go behind such a Rule Absolute or previous adjudication and examine the complete truth of the case and render judgment accordingly. *Holcombe* v. *Dupree*, 50 Ga. 339; *Wakefield* v. *Moore*, 65 Ga. 269; *Davis* v. *Dempsey*, 15 Ga. at page 184; *Chipman* v. *Barron*, 2 Ga. 233.

11. This case comes clearly within the intent and meaning of the decisions of the Supreme Court of Georgia in the paragraph next above because it appears from the affidavits and depositions forming a part of the record in this case in this court, that Aiken "is not and had not been in contempt," and the fact that he "was not in contempt when the rule absolute was passed is obvious, nay palpable" (*Chipman* v. *Barron*, 2 Ga. 233). In support of this contention, Aiken cites the following incontravertible facts affirmatively appearing in the record in this case:

(a) Receipt by Richardson from Aiken of a check for $1,591.33, prior to the institution of the Penal Money Rule Proceeding in this case, as evidenced by Richardson's own Exhibit B, being a photostatic copy of said check, attached to his Motion for the Rule (R. 23).

(b) That Richardson plainly admitted *under oath in his deposition* that he well knew and understood, *before and at the time of the settlement*, he would receive from Aiken "around $1,600.00" in full satisfaction of the amount due him. (R. 92-3.)

(c) That a Definite, Positive, Distinct, and Satisfactory Agreement had been entered into between Aiken and Richardson *prior* to the delivery of the executed releases settling the Richardson damage suits (R. 88-94), under which Richardson was to receive from Aiken $1,591.33 in full satisfaction of the amount due him.

(d) That Richardson did not question the terms of said settlement between him and Aiken until *after* Aiken had delivered the executed releases to counsel for the insurance carrier and had secured and deposited for collection the drafts received therefor (R. 88-94; 22-24), when it became impossible to cancel the settlement of the damage suits, including the terms of settlement between Aiken and Richardson.

12. State Superior Court Judge Moore properly went behind said Penal Rule Absolute and into the merits of this case and allowed the evidence specified in the next preceding paragraph and its sub-paragraphs showing Appellant was not (and is not) in contempt of court and that there was no basis whatever for the rule or rule absolute, but Judge Moore nevertheless denied Appellant's Motion to Set Aside said Penal Rule Absolute rendered without a trial and without any evidence, and the Supreme Court of Georgia affirmed this judgment. Appellant assigned error both before Judge Moore and in the Supreme Court of Georgia and in this appeal to the U. S. Supreme Court on the ground that he was thereby deprived of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution in the particulars specified in his Statement as to Jurisdiction.

13. Appellee cited no case in his Motion to Dismiss Appellant's appeal, and no authority can be cited which supports said Motion. He does cite in his Statement Against Jurisdiction the case of *Missouri, Kansas, and Texas Railway Company* v. *John Sealy* et al, 248 U. S. 363. This case is not in point. It involved bills of lading in a *Civil* case and has no bearing whatever upon the case at bar. On the contrary, the case of *Hovey* v. *Elliott*, supra, (relied on by Appellant), was a *Penal* and Contempt Money Rule case like the one at bar and held that a judgment rendered in such a case without a trial and without any evidence constituted a denial of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, was void for want of jurisdiction, and was not entitled to any respect in any judicial tribunal. The said decision is applicable and controlling here and demands that jurisdiction be noted.

To use the language of this court in *Hovey* v. *Elliott*,

167 U. S. 409, the principles relied upon by Appellant in this appeal as presented in his Assignments of Error and supported without contradiction by the record, express *"the most elementary conception of the judicial function."*

REPLY TO STATEMENT AGAINST JURISDICTION.

The Statement of Appellee Against Jurisdiction is incorrect and misleading in many respects. In the interest of brevity, no effort will be made in this brief to point out all of the errors in Appellee's said Statement, but special attention is invited to Appellant's Statement as to Jurisdiction and the portions of the record there cited for a correct statement of the material facts involved. It will be noted that Appellee does not cite any portion of the record to support any part of his statement. In accordance with the Rules of this Court, Appellant specified in his Praecipe only those portions of the record material to a consideration of the Federal questions raised in his appeal.

The second paragraph of Appellee's Statement is incorrect and misleading. The record shows affirmatively and without contradiction that Appellee agreed at the time his case was settled to accept $1,591.33 in full payment of the amount due him out of said settlement, and that this amount was sent to him by check dated May 20, 1949, immediately upon collection, in conformity with said agreement (R. 88-94; 22-24). Appellee also admitted in his deposition that at the time he turned over the releases to Appellant, he was told he would get "around $1,600.00" out of his case, and that he then left said executed releases with Appellant. (R. 92-3.) Appellee states Appellant "collected $3,425.00 for him in May, 1949" and that he "instructed Aiken to deduct his one-third attorney's fee and out-of-pocket expenses and to remit the balance with a statement of the expenses deducted." The record shows this demand was not made upon Appellant by Appellee until "about a week" after Appellee left the executed release in settlement of

his case with Appellant with the agreement to accept $1,591.33 in full payment of the amount due him out of the said settlement (R 22). The record also shows that Appellant rendered valuable legal services to Appellee in addition to securing said settlement for him, including the successful defense of his wife in the criminal charges preferred against her by the person with whom she had the collision, the successful prosecution of said person in her charges against him, the successful representation of Appellee with his liability insurer against the contentions of the person with whom Mrs. Richardson collided that the collision and resulting damages to him were caused by her negligence, etc. The record shows affirmatively that Appellee agreed at the time his case was settled to accept the Definite and Stated amount of $1,591.33 in full satisfaction of the amount due him out of said settlement, without the itemization of any expenses, and that Appellant agreed to accept the balance of said settlement in satisfaction of the amount due him in all of said matters handled by him for Appellee (R. 88-94).

The Appellee refers to the "numerous affidavits, depositions, and letters" submitted to Judge Moore by Appellant in February, 1953, in support of Appellant's Motion to Set Aside the Rule Absolute, and states, "From none of these documents did it appear that Aiken had any legitimate expenses chargeable to Richardson for which he had not been given credit." This statement is utterly false and entirely unsupported by any evidence whatsoever. It is in direct conflict with the evidence presented by Appellant on the hearing of his Motion to Set Aside as Void the Rule Absolute. For instance, Pages 143-A through 143-G of the Bill of Exceptions in the Supreme Court of Georgia show many hundreds of dollars in expenses paid by Appellant in representing Richardson, for which he was not reimbursed or credited, and far more than the difference between the $1,591.33 paid Richardson as agreed in the contract of

settlement, and the $2,283.33 arbitrarily demanded by Appellee about a week after the settlement had been consummated and when it was too late to rescind said settlement. Pages 143-F and -G of said Bill of Exceptions show a fee of $250.00 due Appellant by Appellee for defending the latter's wife and in prosecuting the person with whom she had the collision, in criminal court at Appellee's request. Pages 147 through 151 of said Bill of Exceptions show valuable legal services rendered by Appellant to Appellee in matters other than the claims of Appellee and his wife for damages resulting from the collision. Appellee's First Amendment shows he agreed under his own signature on October 13, 1949, that the expenses to that time were "at least $750.00 in addition to the ordinary professional expenses required in carrying on this litigation over a period of 17 months." (R. 28-33.)

The statement of Appellee, "Nor did it appear that Aiken had ever paid or offered to pay Richardson any part of the $3,425 which he had collected in May, 1949, except for the conditional tender of $1,591.33 which was made without explanation in full settlement, and was for that reason refused," is incorrect and misleading. The record shows Appellant sent Appellee a check for $1,591.33 on May 20, 1949, "in full payment and satisfaction of amount due payee out of the settlement of his case and all his claims versus W. E. Coker and West View Corporation," in exact accordance with the agreement between Appellee and Appellant for the settlement of said case and the disbursement of the funds resulting therefrom (R. 88-94; 23); that Richardson received said remittance as shown by Exhibit B attached to his Motion for the Money Rule (R. 23); that he returned it through his brother on or about May 23, 1949, with oral and written demands that he be paid $2,283.33 instead (which was $692.00 more than the amount he had agreed to accept in order to induce Aiken to settle his case) and threatened Aiken with this Penal Proceeding and 20 per

cent penalty if he did not comply with said arbitrary and lawless demands (R. 24). See in this connection Georgia Code Sections 26-1801 and -1802.

Appellee states, "At the conclusion of Aiken's argument, the Court, without inviting the presentation of evidence by Richardson, announced that it did not think the motion should be granted." This statement is incorrect and entirely outside the record. If it were permissible to go outside the record and show what Judge Moore stated at the time he overruled Appellant's Motion to Set Aside the Judgment, attention would be invited to the fact that at the conclusion of the evidence presented by Aiken, Judge Moore asked counsel for Richardson if he had anything to offer, and he stated that the only thing he had to present was the decision of the Court of Appeals in *Aiken* v. *Richardson*, 85 Ga. App. 180, 68 S. E. 2nd 228, and that Judge Moore stated in substance to Aiken from the Bench, after reading some of the evidence, that if Aiken had been permitted to present said evidence to a jury, it would no doubt have found in his favor.

Appellee states that all of the numerous grounds set out by Appellant in his Motion to Set Aside the Judgment, "could have been, and so far as we can determine, actually were, raised, considered and adjudicated on the two previous appeals of this case." This statement is incorrect. The questions raised in Appellant's Motion to Set Aside the Rule Absolute in this case, in his appeal from the denial of said Motion to the Supreme Court of Georgia, and in his appeal to this Court, have never been adjudicated. They could not have been adjudicated by the Court of Appeals in the decision referred to by Appellee because the Supreme Court of Georgia has exclusive jurisdiction to decide questions involving "the construction of the Constitution of the State of Georgia" and the Constitution "of the United States," and "in all cases in which the constitutionality

of any law of the State of Georgia or of the United States is drawn in question." Article VI, Section II, Paragraph IV of the Georgia Constitution (Georgia Code Section 2-3704). The questions raised by Aiken in the manner stated "involved the construction of the Constitution of the State of Georgia" and "of the United States," and they draw in question the constitutionality of said specified laws of the State of Georgia as being violative of said provisions of both the Georgia and the U. S. Constitutions. These questions have never been decided in this case. They could not have been decided before, and they could not have been raised before they were raised by Aiken. If they could have been raised and decided before by the Court of Appeals, a decision thereon adverse to Aiken would have been utterly void because it would have been outside the jurisdiction of said court and in direct conflict with the decisions of the U. S. Supreme Court and the Supreme Court of Georgia on the questions involved and would have been in gross violation of the provisions of the U. S. and Georgia Constitutions specified and relied upon by Aiken in his Motion to Set Aside the Judgment in the Superior Court, in his appeal to the Supreme Court of Georgia, and in his appeal to this court. *Hovey* v. *Elliott*, 167 U. S. 409, 17 S. Ct. 841; *Texas* v. *White*, 10 Wall. 483; *Felton* v. *Smith*, 52 Ga. App. 436; *Cooke* v. *U. S.*, 267 U. S. 517, 45 S. Ct. 390; *In Re: Oliver*, 333 U. S. 257; *Manley* v. *State of Georgia*, 279 U. S. 1, 49 S. Ct. 30; *Scott* v. *Sala*, 54 Ga. App. 803, 189 S. E. 431; *U. S.* v *Walker*, 3 S. Ct. 282, 109 U. S. 258; *Prescott* v. *Bennett*, 50 Ga. 268.

Appellee states in conclusion "that the purpose and effect of this appeal is to delay proceedings on the judgment of the lower court and payment of the money collected by the Appellant as attorney for the Appellee in May, 1949." This statement is false and cannot be supported by any authority or any portion of the record. Appellant has appealed to the U. S. Supreme Court in order to prevent the

confiscation of his property, to the extent of over $4,000.00 in cash at the present time and destruction of his good name and reputation, and the deprivation of his means of livelihood if he fails to submit to said confiscation and of his liberty by imprisonment if he fails to comply with the "arbitrary edict" (*Hovey* v. *Elliott*, supra) rendered against him in this case, without a trial and without any evidence, all without due process of law and without equal protection of the law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. Furthermore, as to Appellee's charge that the purpose of this appeal is delay, the record in this court shows that Appellant has made a good and valid bond which has been duly approved by the Chief Justice of the Supreme Court of Georgia for the full amount of said "arbitrary edict," including the confiscatory penalty thereon of 20 per cent per annum from May 23, 1949, until complied with.

Appellee quotes paragraph 4 of the decision of the Supreme Court of Georgia in this case in which it admits jurisdiction by reason of the attack on the constitutionality of Georgia Code Section 24-206, but cites the case of *Burns* v. *State*, 191 Ga. 60, 62, 11 S. E. 2nd 350, as authority for the statement that it was not necessary to pass upon said constitutional ground, upon the theory that its decision could properly rest upon another ground. Appellee then cites the case of *Missouri, Kansas, and Texas Railway Company* v. *John Sealy, et al.*, 248 U. S. 363, in support of said holding of the Supreme Court of Georgia.

The case of *Burns* v. *State*, 191 Ga. 60, 62, 11 S. E. 2nd 350, cited by the Supreme Court of Georgia to support its said ruling, has no application to the case at bar. In that case there was a trial *by jury* and a *verdict* was returned and a *new trial* was granted. *The court there pointed out that it was not necessary to pass upon the constitutional ground raised in that case because the error assigned was*

"effectually cured and obliterated by the action of the court in granting a new trial." In the case at bar, the Rule Absolute was entered without any trial and without any evidence. Therefore, in view of the nature of the decision in *Burns* v. *State*, supra, where a new trial was granted, thereby eliminating the issue involved in the constitutional ground, it does not follow that in the absence of a new trial the constitutional question raised can be eliminated from consideration under the theory upon which *Burns* v. *State*, supra, was decided. Indeed, it is a complete non sequitur!

The case of *Missouri, Kansas, and Texas Railway Company* v. *John Scaly, et al.*, supra, cited by Appellee as the only case in support of his Motion to Dismiss Appellant's appeal and his Statement Against Jurisdiction, is not in point. It involved bills of lading in a Civil case and has no bearing whatever upon the case at bar. On the contrary, the case of *Hovey* v. *Elliott*, supra (relied on by Appellant), was a Penal and Contempt Money Rule case like the one at bar and held that a judgment rendered in such a case without a trial and without evidence constituted a denial of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, was void for want of jurisdiction, and was not entitled to any respect in any judicial tribunal.

No authority can be cited by Appellee which supports his contention that the Supreme Court of Georgia did not have to decide this Federal constitutional ground, for the reason that any statute which allows the awarding of a 20 per cent penalty per annum against a respondent in a Penal Money Rule case on any amount, without a trial and without any evidence, is utterly void and unconstitutional in that it deprives the respondent of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. *Hovey* v. *Elliott*, supra.

In Paragraph 1 of its decision of May 12, 1953, the Supreme Court of Georgia cites Georgia Code Section 110-501 as authority for the statement that, "A final judgment between the parties is conclusive as to all issues and matters that actually were or could have been dealt with and put in issue." *This Code section has no reference whatever to a Rule Absolute in a Penal Money Rule proceeding.* A judgment in such a proceeding is controlled by *Holcombe* v. *Dupree*, 50 Ga. 336; *Chipman* v. *Barron*, 2 Ga. 236; and *Wakefield* v. *Moore*, 65 Ga. 268 (Penal Money Rule cases), holding that a Contempt Rule against an officer of the court is not subject to the estoppel rule and is not in the same category as other cases, but that the court must necessarily, in a proper case, go behind the previous adjudication, and examine the full and complete truth of the case and render a judgment accordingly, *and for this purpose such a contempt rule or Rule Absolute is ALWAYS OPEN;* and by *Hovey* v. *Elliott*, 167 U. S. 409, 17 S. Ct. 841, holding that a judgment rendered in such a case without a trial and without any evidence is void for want of jurisdiction in the court to render it, that it constitutes a denial of due process in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, and that it is not entitled to any respect at any time in any judicial tribunal. The following authorities are also to the same general effect: *Prescott* v. *Bennett*, 50 Ga. 268; *Franklin* v. *Crowe*, 128 Ga. 458, 57 S. E. 784; *U. S.* v. *Walker*, 3 S. Ct. 282, 109 U. S. 258; *Jones* v. *Jones*, 181 Ga. 747, 184 S. E. 270; *Towns* v. *Springer*, 9 Ga. 130; and *Georgia Code Sections* 110-701, 110-702, and 110-709.

CONCLUSION

Counsel for Appellant have carefully read all the authorities cited by the Supreme Court of Georgia and have found that not a one of them supports its decision. If they could be construed to support said decision, they could not be

followed because they would be in direct conflict with the uniform and controlling decisions of the U. S. Supreme Court on the points involved and in violation of Section I of the Fourteenth Amendment of the U. S. Constitution. In the interest of brevity, the cases cited by the Supreme Court of Georgia will not be analyzed in this brief on the question of the jurisdiction because the decisions cited by Appellant show so clearly and positively that this court has jurisdiction of this appeal. Furthermore, this Court will readily observe from a mere reading of Appellant's Statement as to Jurisdiction, without considering any of the authorities cited, that it has jurisdiction.

The record shows that Appellant has been a reputable member of the Georgia Bar for over 33 years and of the Bar of this Court since November 25, 1935. He has been a member in good standing of the American, Georgia, and Atlanta Bar Associations, and the Lawyers Club of Atlanta for many years.

As a matter of record, Judge Townsend in his special concurrence in the decision of the Court of Appeals of Georgia (*Aiken* v. *Richardson*, 85 Ga. App. 180) called attention to the attacks levied against the professional integrity of Appellant in the pleadings of Appellee and in the briefs of his counsel in this Penal Proceeding in both the Superior and Appellate Courts of Georgia, and stated that in justice to Appellant, he, Judge Townsend, desired to make it clear that said attacks made upon the character of Appellant were unwarranted, and this statement was made without the evidence showing the falsity of said charges, produced by Appellant on the hearing of his later Motion to Set Aside said Void Judgment. Judge Townsend further stated in his said opinion that if the order of Judge Andrews sustaining Appellee's Motion to Strike Appellant's Answer on the ground it was evasive had been the subject of review, it was his "personal opinion" that it would have been the

duty of that court to find that Judge Andrews had abused his discretion in holding the answer so evasive as to require its dismissal.

Appellant, nevertheless, stands before this Honorable Court (of which he has been a member for about eighteen years) condemned, convicted, and sentenced as a criminal, without a trial and without any evidence, and contrary to the positive, uncontradicted and overwhelming evidence allowed, but not followed as required by law, on his Motion to Set Aside the "arbitrary edict" rendered against him in this case. Such a travesty upon justice and gross violation of the Fourteenth Amendment of the U. S. Constitution demand the affirmative action of this Court by noting jurisdiction and reversing said "arbitrary edict." This Honorable Court undoubtedly has the constitutional power, right, and duty to note jurisdiction of this appeal and, after argument, to set aside said "arbitrary edict" as void for want of jurisdiction and as a denial of due process of law in violation of Section I of the Fourteenth Amendment in accordance with its prior applicable and controlling decision in Hovey *v.* Elliott, *supra.*

Respectfully submitted,

G. Seals Aiken
In propria persona

Of Counsel:
Ben F. Sweet
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ACKNOWLEDGMENT OF SERVICE

Service acknowledged of the foregoing Brief of Appellant and copy received.

This the ——— day of September, 1953.

Attorneys for William Richardson,
Appellee.

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